

DOD, STATE, AND OBAMA'S "PRETEND" DESIRE TO CLOSE GITMO

Robert Chesney had an interesting [observation](#) about the inter-agency group [Dafna Linzer reports](#) is working on some kind of statement with regards to Congress' restrictions on Obama's ability to move detainees from Gitmo to the US: the apparent non-participation of DOD in the group.

Second, and perhaps relatedly, note that the story also describes the interagency meetings concerning a possible signing statement, meetings that apparently involved a "small circle of policymakers and lawyers from the White House, the Justice Department and State Department" who "spent the closing hours of 2010 considering drafts for a statement." What is interesting about that is the apparent absence of the Defense Department. Of course, not being involved in drafting would not necessarily mean that DOD has no or little voice in the matter, but it certainly would not suggest DOD has much of a role either. One might respond that this is really a question for DOJ and the White House Counsel's office of course, but in that case why is State there? State has clear equities, of course, so I think it makes perfect sense to include it. But DOD's equities seem at least as substantial (yes, the IC has equities here as well, but the DOD omission is what strikes me as remarkable – if there really is an omission).

While I don't know this to be a case, I'd suggest that we might pair that observation with

one I made yesterday: that one of Linzer's sources used the word "pretend" when discussing Obama's purported plans to close Gitmo.

If the bill were signed without challenge, the remaining prosecutorial option left for the administration would be to charge detainees in military commissions at Guantanamo, with those convicted serving time at the facility. So far, the administration has been unwilling to bring new charges in that setting.

"The bill," said one administration official, "undermines the principles outlined in the president's archives speech and there is no way to pretend you are closing Guantanamo if that law goes through unchallenged." [my emphasis]

As Adam Serwer [noted](#) some weeks ago, if the Obama Administration really objected to Congress restricting its prosecutorial power in this matter, it would have rolled out the Republican Bob Gates to talk about how important closing Gitmo is to winning the war on terror.

I don't know whether the administration blessed this deal, but they certainly haven't brought out the big guns—a few words from Defense Secretary Robert Gates would probably go a long way towards dissuading the Senate from going through with this.

(Though Serwer goes on to suggest that another way Obama could indicate the seriousness of his opposition to the restriction would be to issue a signing statement—now we know who to blame for this idea!)

If your desire to close Gitmo is now just pretend, make-believe, then why involve DOD at all? Indeed, a "pretend" desire to close Gitmo would well explain why you involve State, but

not DOD.

As I have noted, one of the [revelations in the Wikileaks cables](#) is the way in which Spain [advised us](#) how to help it combat torture investigations in that country: by proving that some kind of legal process was ongoing in the US.

Zaragoza has also told us that if a proceeding regarding this matter were underway in the U.S., that would effectively bar proceedings in Spain. We intend to further explore this option with him informally (asking about format, timing, how much information he would need, etc.) while making it clear that the USG has not made a decision to follow this course of action.

And the diplomats involved—writing to Secretary of State Clinton—make it clear they will find out from Spain what such a proceeding must look like to serve the purpose of staving off a Spanish investigation.

After which, DOJ seems to have embarked on a “pretend” investigation into torture that—they insist—is ongoing.

Who do you think the audience for any “pretend” effort to close Gitmo would currently be? Certainly not the bulk of the American people, who have been thoroughly suckered by GOP fearmongering on Gitmo. Nor, probably, would the primary audience be al Qaeda and its potential recruits, which would probably be far more impressed at this point [if the US decided to halt drone strikes](#) than if it closed Gitmo.

Indeed, it seems clear that the only reason Obama would feel obliged to pretend to want to close Gitmo anymore (because God knows he seems thoroughly unconcerned by civil libertarians squawking about his campaign promises) is the international community.

And so a statement about Obama opposition to

Congress tying his hands on Gitmo wouldn't matter to DOD, because nothing at Gitmo is actually going to change (aside from his face-saving EO on indefinite detention). But it would matter to the State Department, because they would be the ones who might have had discussions about what a "pretend" effort to close Gitmo would have to look like to please our allies and make them willing to continue to partner with us on counter-terrorism.

Which might explain why [no one at the White House will claim](#) Obama actually wants to use a hypothetical signing statement. Because merely issuing one—but not actually relying on it—would serve its intended purpose: to allow the Administration and our allies to pretend that the US wants to close Gitmo.

Update: YouTube added per [PeasantParty](#).